dispossessed owner was not extinguished but that his remedy was barred, although if he could regain possession he would be remitted to his former title.

What then was the position on the deceased's death? The statement of claim does not specify the date on which the letters of administration to his estate were obtained but it was, I think, stated at the bar that they were obtained some years after the death. But the statement of claim does disclose a gap of about one year between the deceased's death and the subsequent occupation of the land and premises by the second defendant, who is the son of the deceased. It is admitted that the second defendant did not assume possession as the legal personal representative of the deceased and it is not pleaded that he entered as trustee of the deceased's estate. I can therefore see no grounds for the contention that his possession can be tacked on to the possession of the deceased. The statement of claim discloses the fact that on the death of the deceased there was an abandonment of his possession. In such a case when (as in the case before me) the person in possession has not acquired the title to the land, the rightful owner on the abandonment, is in the same position in all respects as he was before the intrusion took place *(Agency Company v. Short* P.C. 13 A.C. 793). In law he was remitted to his former title and could, had he appeared, have ejected the second defendant. I hold therefore that the deceased's interest in the land and premises, the subject of this suit, was terminated at his death and that the pleadings do not dislose any right or title in the plaintiff.

Further, even if the plaintiff were able to show some interest derived from the deceased, he would not, in my opinion, be entitled to a declaration that the indenture between the two defendants passed no right or title to the land in question. It may be that at the date of the indenture the second defendant's length of possession was not sufficient to protect him against the rightful owner but, as a person in possession he had, as against everyone but the rightful owner, an interest which could be inherited, devised or conveyed and could, as against strangers, defend his right of possession until, by force of the Limitation Ordinance as amended in 1929, it had ripened into a right of property. He had therefore an interest or a right, albeit in some respects inchoate, which he could and did transfer to the first defendant.

For these reasons I hold that the objections in law pleaded by the first defendant succeed and the plaintiff's claim must be dismissed with costs to be taxed and paid by the plaintiff to the first defendant.

*Preliminary objection allowed and action dismissed with costs.*

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[APPELLATE CRIMINAL JURISDICTION]

GORDON-SMITH, Ag. J.A., McELWAINE, C.J., POYSER, C.J. (F.M.S.).

## A. SAHIB BIN ALI v. REX.

[PENANG CRIMINAL APPEAL No. 10 of 1939]

*Private Lottery—Common Gaming Houses Ordinance (Cap. 30).*

The Penang Turf Club promoted a private lottery on the result of one of the races held at one of their meetings.

A member of that Turf Club purchased a number of tickets in that lottery, subsequently transferred a sub-share in his lottery tickets to a third person.

**Held,** that, once any person who was not a member of the club acquired a lottery ticket or a share therein the lottery so far as that person was concerned became a sub-lottery and a public lottery. Even on the basis that the chance given by the member to the third person was a free gift from such member to the third person an offence was committed contrary to Section 4 (d) of the Common Gaming Houses Ordinance and punishable accordingly.

CRIMINAL APPEAL.

*Lim Kheng Kooi* for the Appellant.

*R. Moor* (Crown Counsel) for the Crown—Respondent.

The facts and arguments sufficiently appear from the Judgment.

**McElwaine, C.J.**—The appellant was charged that he did receive money in respect of Penang Turf Club lottery tickets, an offence punishable under section 4(d) of the Common Gaming Houses Ordinance (Chapter 30). On this charge the appellant was acquitted but a further charge was then laid.

"That you between 24.12.38 and 7.1.39 at Penang did assist in carrying on a public lottery contrary to section 4 (c) Chapter 30". The appellant then gave evidence and was convicted.

The appeal might have been conveniently brought as a special case stated and it was argued on the following findings of fact set out in the Magistrate's grounds of judgment.

1. That the Penang Turf Club promoted a Sweep or lottery on the result of one of the races on each of the four race meetings on the 24th and 31st December, 1938 and on the 2nd and 7th January, 1939.

2. That the lotteries were private lotteries, the issue of tickets, which are not transferable, being confined to the members of the Turf Club.
3. That the accused had in his possession ten tickets in these lotteries.
4. That on the 22nd December 1938 the accused transferred to Mohamed Yacob, witness 4, a one-tenth share in four tickets in these lotteries free. The numbers of these four tickets corresponded to the numbers on four tickets found in the possession of the accused.
5. That Mohamed Yacob, witness 4, is not a member of the Penang Turf Club.

No appeal was brought against the Magistrate's finding in paragraph 4 that the accused transferred the shares free but Mohamed Yacob said in evidence "one tenth share was to cost 40 cents. I have not paid the forty cents yet" while Exhibit C which appellant gave to Yacob has on it besides the dates and numbers of the four tickets the words written by the appellant "each share 40 cents only. 1/10th share". It appears to me that the Magistrate addressed his mind more to the question whether Yacob had actually paid rather than to the question whether Yacob was to pay. This is not unnatural having regard to the way in which the first charge was laid, namely, that the accused "did receive money". It does not follow from the fact that Yacob had not paid that he was getting his share free.

The case was argued on the basis that the share given to Yacob was a gift and that Exhibit C was a lottery ticket. Exhibit C was as follows:

"Penang Turf Club

| | |
|---|---|
| 26.12.38 | No. 28305 |
| 31.12.38 | No. 21292 |
| 2.1.39 | No. 19823 |
| 7.1.39 | No. 28955 |

Each share 40 cents only 1/10 share".

It was argued by Mr. Lim Kheng Kooi for the appellant that as no ticket was sold to Yacob and as the Turf Club tickets referred to in Exhibit C were at all material times in the possession of the appellant no offence had been committed.

That there was a private lottery was not in dispute. In my opinion Exhibit C is a lottery ticket as defined in the Ordinance.

> "Lottery ticket includes any paper or figure or writing or symbol or other article whatsoever which either expressly or tacitly entitles or purports to entitle the holder or any other person to receive any money or money's worth on the happening of any event or contingency connected with any public lottery."

Once any person who is not a member of the Club acquires an interest in a lottery ticket, the lottery so far as that person is concerned becomes a sub-lottery and a public lottery. *Kader Batcha v. Public Prosecutor* 4 M.L.J., 251, 1935 F.M.S.L.R., 18 though *qua* the Penang Turf Club it is not a public lottery since it was done without the knowledge of and against the rules of the club.

Mr. Lim relied on the judgment of Darling J. in *Willis v. Young and Stembridge* (1907) 1 K.B. at p. 455 as shewing that an absolutely free and gratuitous distribution of chances, none of which has been paid for, would not be a lottery. But whatever the English law may be, there is nothing in the Common Gaming Houses Ordinance to indicate that payment for a chance is an essential ingredient of a lottery. There is a clear indication to the contrary in section 4(d) which among other things enacts that any person who sells or offers for sale or gives or delivers any lottery ticket is liable to a penalty. I stress the word "gives" and I draw attention to the words "if any" in section 10.

*Qua* the lottery organised by the Club Yacob was a member of the public. The appellant gave Yacob a document by which money might be allotted by the appellant to Yacob depending upon chance and this sub-lottery must have begun as soon as a ticket was first given, to adopt the words of Lord Hewart in *Ranson v. Burgess* 137 L.T.R., 530 and this sub-lottery must, in the words of the definition of "public lottery", "until the contrary is proved, be deemed to be a public lottery".

In my opinion even on the basis that the chance was a free gift from the appellant to Yacob the former gave a lottery ticket to Yacob contrary to section 4(d) and under section 310 of the Criminal Procedure Code I would alter the finding to guilty under section 4(d) and confirm the sentence.

The appeal is dismissed.

**Gordon Smith, Ag. J.A.**—I agree.

**Poyser, C.J. (F.M.S.)**—I agree.

*Finding altered—Sentence Confirmed.*

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[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J., TERRELL, J.A. AND POYSER, C.J. (F.M.S.)

June 21, 1939.

## ANG KHYE PANG v. CHOP BAN AIK.

[SINGAPORE CIVIL APPEAL No. 3 of 1939]

*Moneylenders Ordinance, Section 4—Authentication by lender or his agent.*

A promissory note was signed by Tan Say Boh as the borrower and immediately below his signature a